1949 K File No. B. Local Fund Audit | 49.

Legal Dept

B. BRANCH

Subject:— L.A. Bill No III of 1949

A Bill to amend the Bombay Local Fund Audit Act 1950.

Bombay Act No. XII of 1949

P 12.

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Gen. 194 a.

704-B

Legal Department.

A revised draft Bill is sent herewith.

2. Para. 3 of Accountant General's note dated 1.9. 1948 at p.7 ante.- For the purpose in view a suitable definition of the expression "chairman" has been included in clause 2 of the revised draft Bill.

3. Para. 4 of Accountant General's note.- The object of the Act is to provide for and regulate audit of the funds of the local authorities. Section 11 not only provides for illegal payment but it also covers irregular payments. The scope of the Act is restricted to persons who are responsible for the audit and management of the funds. Persons who are not responsible for the management of the funds cannot be brought within the purview of the Act. The remedy against such persons would be under the ordinary law. It would not be proper to amend section 11 as suggested by the Accountant General.

4. In view of Secretary, H. and L.G.D.'S note dated 21. 8. 1948 at page ante, clause 6 of the draft Bill at pages 137-140 of G.D. file 1384/33 has not been included in the revised draft Bill.

5. The subject matter of the Bill falls under entries 13, 37 and 38 in List II in the Seventh Schedule to the Government of India Act, 1935. The Bill does not require any sanction or recommendation under the said Act. After the Bill is passed, it is not necessary to reserve it for the consideration of the Governor General with reference to section 107 (2) of the said Act.

sd/-
Additional Secretary to Government.

U. R. to H. and L.G.D. No. 11359, dated the 2nd December, 1948

No. 3259. 19.

Legal Department,

Bombay Castle, 25th March 1949.

From

T. R. Thirumalai, Esquire, O.B.E.,
Additional Secretary to the Government of Bombay,
Legal Department.

To

The Private Secretary to the Governor of Bombay,

Subject:- The Bombay Local Fund Audit (Amendment) Bill, 1949.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the assent of His Excellency the Governor an authentic copy of the Bombay Local Fund Audit (Amendment) Bill, 1949, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 10th February 1949 and on the 7th March 1949, respectively.

2. The subject-matter of the Bill falls under entries 13, 37 and 38 in List II in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter enumerated in the Concurrent Legislative List, it is not necessary to reserve the same for the consideration of the Governor General with reference to section 107(3) of the said Act.

3. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

I also forward herewith one copy of each of the items

Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons. Nos. 1, 2 and 4 and

Bill as read for the third time and passed by the Bombay Legislative Assembly and by the Bombay Legislative Council. two

3. Bill as read for the third time and passed by the Bombay Legislative Council.

4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 18th February 1949 and of the Bombay Legislativ Council dated the 7th march 1949.

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copies of item No. 3.

of the papers noted in the margin. The Bill was not referred,

to a Select Committee.

Yours faithfully,

sd/-

Additional Secretary to the Government of Bombay, Legal Department.

Through

The Secretary to the Government of Bombay, Health and Local Government Department.

Madhav Raokaram.
c/5. 5/6.

N. P. S.G. 1353.

From

L. M. Nadkarni, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Additional Secretary to the Government of Bombay,
Legal Department.

Bombay, 14th April, 1949.

Subject:- The Bombay Local Fund Audit (Amendment) Bill, 1949.

Sir,

With reference to your letter No. 3259, dated March 25, 1949, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the authentic copy of the Bombay Local Fund Audit (Amendment) Bill, 1949.

Yours faithfully,

sd/-

Private Secretary to the ~~Government~~ Governor of Bombay,

Madhav Raokadam.
c/5. 5/6

Bills.

A Bill to amend the Bombay Local Fund Audit, Act, 1930.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 165

Bombay Castle, 6th January 1949

Memorandum from the Health and Local Government Department, No. 1384/33-A, dated the 31st December 1948, transferring for necessary action the papers relating to a Bill to amend the Bombay Local Fund Audit Act, 1930.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 7th January 1949, as Bill No. III of 1949.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 15th January 1949.

3. The dates of the various publications should be reported to Bombay Legislature Department.

By order of the Governor of Bombay,

S. L. Chaudhari,
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay, (with the Bill and the statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and the S.O. R. may be forwarded to the Bombay Legislature Department for distribution to the members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department and 20 copies for the use [redacted] and of Health and Local Government Department. Fifty copies of the Bill in English and 20 copies in each of the regional languages should be kept in stock at the Government book depot for sale to the public)

The Health and Local Government Department,
The Oriental Translator to Government

The Bombay Legislature Department,
The Director of Publicity, Bombay,
The Enquiry Officer for the Secretariat, Bombay.

) with a copy of the Bill and S.O.R.

with five extra copies of the Bill.

Madhav Raokadam
c/5 5/6.

Government of Bombay.
Legal Department,
Resolution No. 4428
Bombay Castle, 22nd April 1949.

Letter to the Private Secretary to the Governor, No. 3259, dated the 25the March 1949.

Letter from the Private Secretary to the Governor, No. P. S. G. 1343, dated the 14th April 1949.

" With reference to your letter No. 3259, dated March 25, 1949, I am directed to return herewith, with His Excellency the Governor's assent signified thereon, the authentic copy of the Bombay Local Fund Audit (Amendment) Bill, 1949."

RESOLUTION.- The law should be published as Bombay Act No. XII of 1949, in the Bombay Government Gazette dated the 22nd April 1949.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari Scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Health and Local Government Department with reference to the Memorandum from that Department No. 1384/33-A, dated the 31 st December 1948.

By order of the Governor of Bombay,

S. L. Chaudhari,

Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to Legal Department).

The Health and Local Government Department
The Oriental Translator to Government,
The Bombay Legislature Department.

The Director of Publicity, Bombay,
The Enquiry Officer for the Secretariat, Bombay.

} with a copy of the act.

With five extra copies of the Act

Madhav Raokadam.
c/5. 5/6-

SVA
2/6

13/7

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. III OF 1949.

A Bill to amend the Bombay Local Fund Audit Act, 1930.

Bom. XXV of 1930.

WHEREAS it is expedient to amend the Bombay Local Fund Audit Act, 1930, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Local Fund Audit (Amendment) Act, 1949.

Bom. XXV of 1930.

Amendment of section 3 of Bom. XXV of 1930.

2. In section 3 of the Bombay Local Fund Audit Act, 1930, hereinafter called "the said Act",—

(*I*) after clause (*a*), the following clauses shall be inserted, namely :—

"(*aa*) 'Chairman' means the president or chairman of the local authority and includes in the case of a dissolved or superseded local authority, the person or persons lawfully appointed to exercise the powers and perform the duties of such local authority ;

(*ab*) 'Detailed audit' means an audit of accounts for the whole year ;" ;

(2) after clause (d), the following clause shall be added, namely :—

"(e) 'Special audit' means an audit of accounts pertaining to a specified item or series of items requiring thorough examination."

Amendment of section 5 of Bom. XXV of 1930.

3. In section 5 of the said Act, for the words "The president or chairman, as the case may be," the words "The chairman" shall be substituted.

Amendment of section 6 of Bom. XXV of 1930.

4. In section 6 of the said Act,—

(1) in sub-section (1),—

(a) for clause (a), the following shall be substituted, namely :—

"(a) require in writing the production at the head office of the local authority of such vouchers, statements, returns, correspondence, notes or other documents in relation to the accounts as he may think fit;";

(b) in clause (b), for the words "such document" the words "such vouchers, statements, returns, correspondence, notes or other documents" shall be substituted ;

(c) in clause (c), the word "president" shall be deleted ;

(2) in sub-section (2), after the words "not being less than three days" the words and figures "in the case of a District Local Board or of a Municipality constituted under the Bombay Municipal Boroughs Act, 1925" shall be inserted ;

Bom. XVIII of 1925.

(3) to sub-section (3), the following proviso shall be added, namely :—

"Provided that, notwithstanding anything contained in this sub-section, the auditor may, for special reasons which shall be recorded in writing, give shorter notice than two weeks or commence a special or detailed audit on the authority of the Commissioner or the Examiner without giving notice."

Amendment of section 8 of Bom. XXV of 1930.

5. In section 8 of the said Act, for the words "Within two months after the completion of the audit," the words "As soon as practicable after the completion of the audit, but not later than three months thereafter," shall be substituted.

6. In section 10 of the said Act,— Amendment of section 10 of Bom. XXV of 1930.

(*1*) for sub-section (*1*), the following shall be substituted, namely :—

"(*1*) On receipt of a report under section 8, the chairman shall remedy any defects or irregularities which may have been pointed out in the report, and shall place the report, together with a statement of the action taken or proposed to be taken thereon and an explanation in regard thereto before a meeting of the local authority. He shall also, within three months of the receipt of the report, send to the Examiner intimation of his having remedied the defects or irregularities, if any, pointed out in the report, or shall, within the said period, supply the Examiner any further explanation in regard to such defects or irregularities as the local authority may wish to give.";

(*2*) in sub-section (*2*) in clause (*a*), the words "president or" shall be deleted;

(*3*) in sub-section (*3*)—

(*a*) the words "president or", where they occur for the first and second times, shall be deleted;

(*b*) for the words "the president or chairman, as the case may be, of the local authority" the words "the chairman" shall be substituted;

(*4*) in sub-section (*4*), for the word "vernacular" the words "regional language" shall be substituted;

(*5*) in sub-section (*5*),—

(*a*) for the words "the president or chairman of a local authority" the words "the chairman" shall be substituted;

(*b*) for the word "vernacular" the words "regional language" shall be substituted;

(*c*) for the words "paid by the Provincial Government" the following shall be substituted, namely :—

"forthwith paid by the local authority concerned. If such cost is not so paid, the Commissioner may make an order directing any person, who for the time being has custody of any moneys on behalf of the local authority, as its officer, treasurer, banker or otherwise, to pay the amount of such cost from such moneys as he may have in his hands or may from time to time receive, and such persons shall be bound to obey such order. Every payment made persuant to such order shall be sufficient discharge to such person from all liability to the local authority in respect of any amount paid by him out of the moneys of the local authority so held by him.";

(*6*) at the end of sub-section (*6*), the words "or which in his opinion deserves special attention or immediate investigation" shall be added.

STATEMENT OF OBJECTS AND REASONS.

The working of the Bombay Local Fund Audit Act, 1930, during the past eighteen years has shown that the Act requires modification in certain details. The object of the Bill is to make the necessary changes. The reasons for the amendments are given in the following notes on clauses of the Bill :—

Notes on Clauses.

Clause 2.—Under section 10 (*1*) of the Act the defects pointed out by the Examiner, Local Fund Accounts, are to be remedied by the Chairman or President of the Local Authority, but there is no provision for cases of local authorities which are superseded and for which administrators are appointed. It is therefore proposed to include a definition of "Chairman" in the Act which will apply in all circumstances.

The clause also provides for definitions of the terms "special audit" and "detailed audit" which are used in the proviso proposed to be added by clause 4 to section 6 of the Act.

Clause 4.—A very restricted interpretation has been put by certain local authorities on the term "document" used in section 6 of the Act. It is, therefore, proposed to make it clear that an auditor may call for any papers or explanations in relation to the accounts as he may consider fit.

Secondly, section 6 requires that not less than three days' time must be given to a local authority to comply with the requisitions of an auditor for documents or information. In the case of small audits, the total time allowed ranges from 2 to 6 days, and if 3 days are to be allowed for compliance with every requisition, the necessary information may not be available within the period allowed for the audit. It is proposed to provide that, except in the case of district local boards and municipal boroughs, the auditor may fix a period of less than three days for compliance with his requisition.

Thirdly, section 6 requires that at least two weeks' notice must be given to a local authority before an audit is taken up. It is sometimes necessary, for administrative reasons, to make changes in the programme of an auditor which necessitate the taking up of some audits within the period of two weeks' notice. It is also sometimes necessary to undertake special audits urgently to investigate irregularities or frauds coming to notice in the course of the year.

It is proposed to provide that, for special reasons to be recorded in writing, an audit may be taken up with shorter notice than two weeks and that if necessary an audit may be taken up under instructions from the Commissioner or the Examiner, Local Fund Accounts, without previous notice.

Clause 5.—Section 8 of the Act requires the Examiner to forward his report on the accounts of a local authority, to the local authority and the officers concerned within two months after the completion of the audit. It has been found from experience that this period is often insufficient, especially as the report has to be printed. It is, therefore, proposed to allow the Examiner a maximum period of three months for making his report.

Clause 6.—(1) Under section 10 of the Act the president or chairman of a local authority is required to remedy the defects pointed out in the Examiner's report and to supply to the Examiner such explanations as he may wish to give. It has been found that explanations are sometimes given

without the report being placed before the local authority. It is proposed to provide that the president or chairman should place the report of the Examiner before the local authority and that the explanations should be those of the local authority and not merely those of the president or chairman.

(2) If the president or chairman of a local authority fails to give an explanation within the period prescribed the Commissioner is authorised to publish the Examiner's report, with any observations which the Commissioner may make thereon, in any newspaper circulating in the district, and the cost of publication is payable by Government. Since the publication is necessitated by default on the part of the local authority it is reasonable that the cost of publication should be borne by the local authority. Provision is made accordingly. Procedure for recovery of such amounts is also provided.

(3) Provision is made to enable the Examiner to bring to the notice of the Commissioner at any time information which in his opinion deserves special attention or immediate investigation. At present only information which appears to support a presumption of criminal misappropriation or fraud may be brought to the notice of the Commissioner at any time.

(4) The word "vernacular" appearing in sub-sections (*4*) and (*5*) of this section is replaced by the words "regional language".

Dated the 31st December 1948. (Signed) G. D. VARTAK.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

Bombay, dated the 6th January 1949.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

The following Act of the Bombay Legislature having been assented to by the Governor on the 14th April 1949 is hereby published for general information.

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XII OF 1949.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 22nd April 1949.)

An Act to amend the Bombay Local Fund Audit Act, 1930.

Bom. XXV of 1930.

WHEREAS it is expedient to amend the Bombay Local Fund Audit Act, 1930, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Local Fund Audit (Amendment) Act, 1949.

Bom. XXV of 1930.

Amendment of section 3 of Bom. XXV of 1930.

2. In section 3 of the Bombay Local Fund Audit Act, 1930, hereinafter called "the said Act",—

(*1*) after clause (*a*), the following clauses shall be inserted, namely :—

"(*aa*) 'Chairman' means the president or chairman of the local authority and includes in the case of a dissolved or superseded local authority, the person or persons lawfully appointed to exercise the powers and perform the duties of such local authority;

(*ab*) 'Detailed audit' means an audit of accounts for the whole year;";

(2) after clause (*d*), the following clause shall be added, namely :—

" (*e*) ' Special audit ' means an audit of accounts pertaining to a specified item or series of items requiring thorough examination."

Amendment of section 5 of Bom. XXV of 1930.

3. In section 5 of the said Act, for the words " The president or chairman, as the case may be," the words " The chairman " shall be substituted.

Amendment of section 6 of Bom. XXV of 1930.

4. In section 6 of the said Act,—

(*1*) in sub-section (*1*),—

(*a*) for clause (*a*), the following shall be substituted, namely :—

" (*a*) require in writing the production at the head office of the local authority of such vouchers, statements, returns, correspondence, notes or other documents in relation to the accounts as he may think fit ;" ;

(*b*) in clause (*b*), for the words " such document " the words " such vouchers, statements, returns, correspondence, notes or other documents " shall be substituted ;

(*c*) in clause (*c*), the word " president, " shall be deleted ;

(*2*) in sub-section (*2*), after the words " not being less than three days " the words and figures " in the case of a District Local Board or of a Municipality constituted under the Bombay Municipal Boroughs Act, 1925 " shall be inserted ;

XVIII of 1925.

(*3*) to sub-section (*3*), the following proviso shall be added, namely :—

" Provided that, notwithstanding anything contained in this sub-section, the auditor may, for special reasons which shall be recorded in writing, give shorter notice than two weeks or commence a special or detailed audit on the authority of the Commissioner or the Examiner without giving notice."

Amendment of section 8 of Bom. XXV of 1930.

5. In section 8 of the said Act, for the words " Within two months after the completion of the audit," the words " As soon as practicable after the completion of the audit, but not later than three months thereafter." shall be substituted.

6. In section 10 of the said Act,— Amendment of section 10 of Bom. XXV of 1930.

(*1*) for sub-section (*1*), the following shall be substituted, namely :—

"(*1*) On receipt of a report under section 8, the chairman shall remedy any defects or irregularities which may have been pointed out in the report, and shall place the report, together with a statement of the action taken or proposed to be taken thereon and an explanation in regard thereto before a meeting of the local authority. He shall also, within three months of the receipt of the report, send to the Examiner intimation of his having remedied the defects or irregularities, if any, pointed out in the report, or shall, within the said period, supply the Examiner any further explanation in regard to such defects or irregularities as the local authority may wish to give.";

(*2*) in sub-section (*2*), in clause (*a*), the words "president or" shall be deleted;

(*3*) in sub-section (*3*),—

(*a*) the words "president or", where they occur for the first and second times, shall be deleted;

(*b*) for the words "the president or chairman, as the case may be, of the local authority" the words "the chairman" shall be substituted;

(*4*) in sub-section (*4*), for the word "vernacular" the words "regional language" shall be substituted;

(*5*) in sub-section (*5*),—

(*a*) for the words "the president or chairman of a local authority" the words "the chairman" shall be substituted;

(*b*) for the word "vernacular" the words "regional language" shall be substituted;

(*c*) for the words "paid by the Provincial Government" the following shall be substituted, namely :—

"forthwith paid by the local authority concerned. If such cost is not so paid, the Commissioner may make an order directing any person, who for the time being has custody of any moneys on behalf of the local authority, as its officer, treasurer, banker or otherwise, to pay the amount of such cost from such moneys as he may have in his hands or may from time to time receive, and such person shall be bound to obey such order. Every payment made pursuant to such order shall be sufficient discharge to such person from all liability to the local authority in respect of any amount paid by him out of the moneys of the local authority so held by him.";

(*6*) at the end of sub-section (*6*), the words "or which in his opinion deserves special attention or immediate investigation" shall be added.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.